

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 3873
OFFERED BY MR. BOEHNER**

Price levels of retail stores

After section 408 insert the following new section
(and redesignate succeeding sections and conform the
table of contents accordingly):

1 SEC. 409. PRICE LEVELS OF RETAIL STORES.

2 Section 17(h)(11) of the Child Nutrition Act of 1966
3 is amended by adding at the end the following:

4 “(C) ADDITIONAL REQUIREMENTS.—

5 “(i) The State agency shall evaluate a
6 vendor applicant based on its shelf prices
7 or on the prices it bids for supplemental
8 foods, which may not exceed its shelf
9 prices.

10 “(ii) The State agency shall establish
11 price limitations on the amount that it will
12 pay vendors for supplemental foods. The
13 State agency shall ensure that price limita-
14 tions do not result in inadequate partici-
15 pant access by geographic area.



1 “(iii) In establishing competitive price
2 and price limitation requirements, the
3 State agency may exclude pharmacy ven-
4 dors that supply only exempt infant for-
5 mula or medical foods that are eligible
6 under the program.

7 “(iv) The State agency shall establish
8 competitive price requirements and price
9 limitations for vendor peer groups, as nec-
10 essary to ensure that prices paid to ven-
11 dors are competitive. Vendor peer group
12 competitive price requirements and price
13 limitations may reflect reasonable esti-
14 mates of varying costs of acquisition of
15 supplemental foods.

16 “(D) INCENTIVE ITEMS.—The State agen-
17 cy shall not authorize a retail food store that
18 provides incentive items or other free merchan-
19 dise to program participants if funds available
20 under this program were used to purchase such
21 items or merchandise.

22 “(E) RULES OF CONSTRUCTION.—Nothing
23 in this section may be construed to authorize
24 violation of the Sherman Antitrust Act (15



- 1 U.S.C. 1 et. seq.) or the Robinson-Patman Act
- 2 (15 U.S.C. 13 et. seq.).”.

